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PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, the 23rd December, 2020

S. R. O. 1384(I)/2020.—In exercise of the powers conferred under section 169 of the Securities Act, 2015 (III of 2015), the Securities and Exchange Commission of Pakistan is pleased to make the following amendments in the Debt Securities Trustees Regulations, 2017, the same having been previously published in the official Gazette *vide* S. R. O. notification 1229(I)/2020 dated November 18, 2020, as required under sub-section (4) of section 169 of the Securities Act, 2015 for eliciting public opinion, namely:—

In the aforesaid Regulations,—

- (1) for the words “Ordinance”, wherever occurring, the words “Companies Act” shall be substituted;

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(2) for regulation 1,—

- (a) in sub-regulation (1), for the expression “Debt securities trustees Regulations, 2017” the expression “Structuring of Debt Securities Regulations, 2020” shall be substituted; and
- (b) for sub-regulation (3), the following shall be substituted, namely:—

“(3) They shall apply to debt security issuance both under the applicable private placement or public offering framework.”

(3) in regulation 2,—

- (a) in sub-regulation (1),—
 - (i) after clause (b), the following shall be inserted, namely:—

“(ba) “Companies Act” means the Companies Act, 2017 (XIX of 2017);”
 - (ii) for clause (c), the following shall be substituted, namely:—

“(c) “debt security” includes—

- (i) any instrument creating or acknowledging indebtedness which is issued or proposed to be issued by a company including in particular, debentures stock, loan stock, bonds, notes, commercial paper, term finance certificates, sukuk or any other conventional or Islamic debt security of a company, whether constituting a charge on the assets of the issuing company or not;
 - (ii) loan stock, bonds, and other instruments creating or acknowledging indebtedness by or on behalf of a government, central bank, a local authority or a public authority and issued through capital market.”;
- (iii) for clause (d), the following shall be substituted, namely:—

“(d) “debt securities trustee” means a person licensed by the Commission under the Act and appointed as Debt securities trustee by an Issuer through execution of Trust deed.”;

(iv) for clause (e), following shall be substituted, namely:—

“(e) “issue” include issuance of debt securities, as applicable, through;

(i) execution of Trust Deed;

(ii) execution of Issuance Agreement;” ;

(v) after clause (e), substituted as aforesaid, the following new clauses shall be inserted, namely:—

“(ei) Issuer in relation to debt securities, means any person including a company, a Special Purpose Vehicle, a body corporate, federal government and provisional government who has issued or proposes to issue a debt security;

(eii) “Issuance agreement” means an agreement executed between the issuer and the investment agent for issuance of debt securities.

(eiii) Investment agent means an entity that holds a valid license to act as Consultant to the Issue under the Securities Act, 2015 and is appointed by the issuer through execution of issuance agreement.

Explanation.—Any Investment Agent that has entered into an agreement with the Issuer before coming into force of this notification shall continue to act as Investment agent for the debt issuance transaction provided that such Investment Agent shall, within two months of date of commencement of this amendments notification, obtain license of Consultant to the Issue and ensure compliance with these regulations accordingly.”;

(vi) clause (f), shall be omitted; and

(vii) for clause (g), the following shall be substituted, namely:—

“(g) “Trust Act” means the prevailing Trust laws.”

- (4) Chapter-II “Licensing Requirements” along-with regulations 3, 4, 5, 6, 7, 8, 9 and 10 shall be omitted.

in Chapter-III, for the heading “FUNCTIONS, DUTIES, OBLIGATIONS AND RESTRICTIONS” the heading “DEBT SECURITIES TRUSTEE” shall be substituted;

- (5) for regulation 11, the following shall be substituted namely:—

“11. **Functions, Duties of Debt securities trustee.**—A Debt securities trustee shall,—

- (i) enter into an agreement with the issuer for issuance of secured debt securities through execution of Trust Deed, which *inter-alia* contain that the Debt securities trustee has agreed to act as a trustee under the Trust Deed for securing the interest of the Debt securities holders:

Provided that agreement must be entered before the subscription period;

- (ii) ensure that NOC is obtained by the Issuer from the Commission before the creation of trust relating to debt securities and the said trust is registered with relevant provisional authorities;
- (iii) ensure that issuer submits the following information to the Commission in relation to obtaining NOC for creation/registration of trust—
- (a) Author of the Trust;
 - (b) Name of Trustee;
 - (c) Purpose of the Trust;
 - (d) Issue size;
 - (e) Trust Assets;
 - (f) Main features of the Issue;
 - (g) Beneficiary of the Trust; and
 - (h) Any other information required by the Commission;
- (iv) ensure that the Trust Deed contains all terms and conditions specified in Schedule-I and as required under the Trust Act;
- (v) ensure that none of the provisions of the Trust Deed is contradictory to the provisions of the Trust Act;

- (vi) ensure compliance with the provisions of the Trust Deed;
- (vii) participate in each general meeting of the debt security holders;
- (viii) ensure that in case of secured debt securities:
 - (a) appropriate security has been arranged and based on the information obtained from the issuer, the assets backing the debt security are maintained throughout the tenure of the Issue;
 - (b) Charge is created in its favor for the benefit of debt security holders and is registered with the Commission as per the Companies Act;
- (x) enforce security, in the interest of the debt securities holders according to the terms of the Trust Deed; or
- (xi) initiate legal proceeding, in case an event of default occurs, in terms of the relevant Trust Deed and the Trust Act;
- (xii) efficiently take steps as per Trust Deed in the event the security becomes enforceable;
- (xiii) regularly monitor compliance of the issuer with all the covenants of the Trust Deed;
- (xiv) report to the debt security holders and the securities exchange, in case of listed debt securities, on semi-annual basis, the status of compliance with the covenants of the Trust Deed.
- (xv) monitor the status of the redemption reserve, if any, established by the issuer for the redemption of debt securities and in case of listed debt securities furnish the same to the securities exchange, on semi-annual basis;
- (xvi) regularly monitor payment of profits to the debt security holders and redemption of the debt security and report the same to the Commission and the securities exchange on semi-annual basis, highlighting default, if any;

- (xvii) maintain proper record of the complaints received;
- (xviii) ascertain that the debt securities have been converted, where required, in accordance with the provisions and conditions under which they were issued;
- (xix) call a general meeting of all debt securities holders, within such time period as provided in the Trust Deed, on,—
 - (a) a requisition in writing signed by at least one-tenth of the debt securities holders in value for the time being outstanding; and
 - (b) the happening of any event, which pursuant to the Trust Deed constitutes a default by the issuer or which in the opinion of the Debt securities trustee adversely affects the interest of the debt securities holders and place before the general meeting, such proposals for the protection of the interest of the debt securities holders including restructuring/ rescheduling, as the trustee considers necessary or appropriate, and obtain their directions by way of approval of at least two third of the debt securities holder in value for the time being outstanding.
- (xx) not relinquish duties as Debt securities trustee to an Issue until another Debt securities trustee is appointed in its place;
- (xxi) submit any document or information as and when required by the Commission;
- (xxii) provide, on request in writing, copy of certified Trust Deed to the debt security holders as and when required by them;
- (xxiii) protect the interest and rights of the debt security holders in accordance with the Trust Deed;
- (xxiv) inform the Commission immediately of any breach by the issuer of the Trust Deed or provision of the Act, the Companies Act or any other law applicable to the Issue which comes to its knowledge;

- (xxv) ensure that the Commission is promptly informed about any action, legal proceeding etc., initiated against it in respect of any material breach or noncompliance by it of any law, rules or regulations;
- (xxvi) provide the issuer and debt securities holders with adequate and appropriate information about its trusteeship business, including contact details, services available to issuers, and the identity and status of employees and other persons acting on its behalf with whom the issuer or the debt security holders may have to interact;
- (xxvii) ensure that the information shared with the debt security holders through correspondences or other means is correct, adequate, comprehensive and not misleading to the best of its knowledge and belief and is shared on timely basis;
- (xxviii) ensure that:
 - (a) inquiries from debt securities holders are adequately dealt with; and
 - (b) grievances of debt securities holders are redressed in a timely and appropriate manner;
- (xxix) provide adequate freedom and powers to its compliance officer for the effective discharge of its duties under the Act and these Regulations;
- (xxx) not disclose the non-public price sensitive information it has due to its position as a trustee to any person;
- (xxxi) inspect books of accounts, records, registers of the issuer and the security to the extent necessary for discharging its obligations under the issue of debt security;
- (xxxii) maintain high standard of integrity and fairness in performing its functions and discharging all its obligations under the Act and these Regulations in a fair, efficient, transparent and ethical manner;
- (xxxiii) employ sufficient human resource which is adequately trained to efficiently perform its functions as Debt Security Trustee;

- (xxxiv) maintain record of ultimate beneficiary(ies) of the Trust Assets and the Issuer;
 - (xxxv) Inform the Commission of any change in the trust structure or the Trust assets;
 - (xxxvi) Submit its audited annual accounts to the Commission”
- (6) for Regulation 15, the following shall be substituted namely,—
- “15. **Conflict of interest.**—(1) The Debt securities trustee shall take all reasonable steps to ensure that no conflict of interest arises while undertaking any transaction and performing its duties. In this context, it shall—
- (a) before entering into an agreement with the issuer, disclose to the issuer all possible conflicts of interest including that of its sponsors and directors which could impair its ability to render fair, objective and un-biased service;
 - (b) immediately inform to the issuer and the debt security holders, in case any conflict of interest arises and not gain any direct or indirect advantage from the situation and shall act in the best interest of the debt security holders;
 - (c) put in place a mechanism to resolve any conflict of interest that may arise in the conduct of business and take all reasonable steps to resolve all conflict of interests in an equitable manner;
 - (d) ensure that channels of communications, like logs of e-mails and other inter-office information exchange channels are properly documented and monitored regularly and effectively;
 - (e) Put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its business and where any conflict of interest arises, it shall take reasonable steps to resolve the same in an equitable manner.”;
- (8) for regulation 16, the following shall be substituted, namely:—

- “16. **Maintenance of records by Debt securities trustee.**—(1) In addition to the requirements of section 79 of the Act, a Debt securities trustee shall also properly maintain the following records, namely:—
- (a) all contracts relating to the Issue to which it is acting as a Debt securities trustee including but not limited to the Trust Deed, letter of hypothecation, letter of lien, memorandum of deposit of title deed and the charge registration certificate, where applicable etc.;
 - (b) statements relating to profit payment and principal redemption;
 - (c) minutes of the general meeting of the debt security holders and special resolution passed therein;
 - (d) all documents relating to compliance with the covenants of the Trust Deed and enforcement of security, where applicable;
 - (e) Debt security holders’ complaints and subsequent correspondence;
 - (f) Information relating to the trust, trust assets, trust proceeds, Author of the Trust and ultimate beneficiary(ies) of the trust; and
 - (g) such other records as may be specified by the Commission from time to time.
- (2) The Debt securities trustee shall ensure that the record referred to in sub-regulation (1) is maintained and preserved in good order for a period of at least ten years from the date of complete redemption of the Issue.
- (3) The Debt securities trustee shall,—
- (a) ensure that the record is kept at such a place and maintained in such a manner that the Commission or any person appointed by it has easy access to it;
 - (b) establish and follow record retention policy which shall ensure that all relevant legal and regulatory requirements are complied with; and

- (c) Provide the record/information as referred in sub-regulation (1) to the Commission as and when required:

Provided that in case of failure to maintain the aforesaid record/Information and provision of the same to the Commission, the trustee shall be liable to penalty or imprisonment as per Securities Act, 2015 or Trust Act.”

- (9) after regulations 15, the following new chapter IIIA and regulations shall be inserted, namely:—

“CHAPTER-III A

“INVESTMENT AGENT”

- 15A. **Functions, Duties of Investment agent.**—(1) An Investment agent shall,—

- (i) Enter into an agreement with the issuer for issuance of secured and unsecured debt securities through execution of issuance agreement, which *inter-alia* contain that it has agreed to act an investment agent under the issuance agreement for securing the interest of debt securities holders:

Provided that agreement must be entered before the subscription period;

- (ii) ensure that issuance agreement contains all terms and conditions specified in **Schedule-II**;
- (iii) ensure compliance with the provisions of the issuance agreement;
- (iv) participate in each general meeting of the debt security holders;
- (v) ensure that in case of secured debt securities:
- (a) appropriate security has been arranged and is compliant with all legal requirements;
- (b) assets backing the debt security are maintained throughout the tenure of the Issue.

- (vi) Charge is created on relevant assets in favor of investment agent for the benefit of debt security holders and is registered with the Commission as per the Companies Act;
- (vii) enforce security, in the interest of the debt securities holders according to the terms of the issuance agreement;
- (viii) initiate legal proceeding, in case an event of default occurs, in terms of the Issuance agreement;
- (ix) efficiently take steps as per Issuance agreement in the event the security becomes enforceable;
- (x) regularly monitor compliance of the issuer with all the covenants of the issuance agreement;
- (xi) report to the debt security holders and the securities exchange, in case of listed debt securities, on semi-annual basis, the status of compliance with the covenants of the issuance agreement;
- (xii) monitor the status of the redemption reserve, if any, established by the issuer for the redemption of debt securities and in case of listed debt securities furnish the same to the securities exchange, on semi-annual basis;
- (xiii) regularly monitor payment of profits to the debt security holders and redemption of the debt security and report the same to the Commission and the securities exchange on semi-annual basis, highlighting default, if any;
- (xiv) maintain proper record of the complaints received;
- (xv) ascertain that the debt securities have been converted, where required, in accordance with the provisions and conditions under which they were issued;
- (xvi) call a general meeting of all debt securities holders, within such time period as provided in the issuance agreement, on,—
 - (a) requisition in writing signed by at least one-tenth of the debt securities holders in value for the time being outstanding; and

- (b) the happening of any event, which pursuant to the issuance agreement constitutes a default by the issuer or which in the opinion of the Investment agent adversely affects the interest of the debt securities holders and place before the general meeting, such proposals for the protection of the interest of the debt securities holders including restructuring/rescheduling, as it considers necessary or appropriate, and obtain their directions by way of approval of at least two third of the debt securities holder in value for the time being outstanding.
- (xvii) not relinquish duties as Investment agent to an Issue until another Investment agent is appointed in its place;
- (xviii) submit any document or information as and when required by the Commission;
- (xix) provide, on request in writing, copy of certified issuance agreement to the debt security holders as and when required by them;
- (xx) protect the interest and rights of the debt security holders in accordance with the issuance agreement;
- (xxi) inform the Commission immediately of any breach by the issuer of the issuance agreement or provision of the Act, the Companies Act or any other law applicable to the Issue which comes to its knowledge;
- (xxii) ensure that the Commission is promptly informed about any action, legal proceeding etc., initiated against it in respect of any material breach or non-compliance by it of any law, rules or regulations;
- (xxiii) provide the issuer and debt securities holders with adequate and appropriate information about its business, including contact details, services available to issuers, and the identity and status of employees and other persons acting on its behalf with whom the issuer or the debt security holders may have to interact;
- (xxiv) ensure that the information shared with the debt security holders through correspondences or other means is

correct, adequate, comprehensive and not misleading to the best of its knowledge and belief and is shared on timely basis;

(xxv) ensure that:

(a) inquiries from debt securities holders are adequately dealt with; and

(b) grievances of debt securities holders are redressed in a timely and appropriate manner;

(xxvi) provide adequate freedom and powers to its compliance officer for the effective discharge of its duties under the Act and these Regulations;

(xxvii) not disclose the non-public price sensitive information it has due to its position to any person;

(xxviii) inspect books of accounts, records, registers of the issuer and the security to the extent necessary for discharging its obligations under the issue of debt security;

(xxix) maintain high standard of integrity and fairness in performing its functions and discharging all its obligations under the Act and these Regulations in a fair, efficient, transparent and ethical manner;

(xxx) employ sufficient human resource which is adequately trained to efficiently perform its functions as investment agent.

(2) Investment Agent shall not,—

(i) make un-substantiated claims, in order to induce customers, about qualifications of its professional staff or its capabilities to render certain services or its achievements concerning services rendered to other customers;

(ii) involve in unfair competitive practices which are likely to be harmful to the interest of other investment agent, nor shall solicit business from customers on assurance of providing any undue benefit;

- (iii) not publish, circulate or distribute any advertisement or any information which is false, misleading or deceptive or contain such material which is prejudice to the interest of any other person including investors;
- (iv) make any exaggerated statements regarding its capabilities to render certain services or its achievements;
- (v) willfully make false statements or conceal any material fact in any document, report or statement submitted to the Commission.

15B. **Restrictions on the business of investment agent.**—An Investment Agent shall not be eligible to act as an investment agent to any Issue,—

- (i) by its associated companies or associated undertakings;
- (ii) where the investment agent and its associated companies or associated undertakings collectively holds more than 30% shareholding or debt securities of the issuer:

Provided that an investment agent shall not invest more than ten percent of the total issue size where it is acting as investment agent shall hold such investment till maturity and shall hold the interest of the debt securities holders especially the individual debt securities holders and minority debt securities holders supreme while casting its vote in the meetings of the debt security holders.

- (iii) where the investment agent has under-written or intends to underwrite the Issue;
- (iv) where the investment agent or any of its associated companies or associated undertakings has provided any guarantee with respect to the amount payable under such Issue; and
- (v) where more than thirty percent of the total liabilities of the issuer as disclosed in its latest audited financial statements are outstanding towards the investment agent.

15C. **Appointment of compliance officer.**—(1) Every investment agent shall designate any senior management officer as a compliance officer:

Provided that a scheduled bank or development financial institution or investment finance company shall be deemed compliant with the above requirement if it has appointed a compliance officer under the law governing its principal business.

- (2) The compliance officer shall be responsible to:
- (a) monitor compliance of the investment agent with the requirements of the Act and these Regulations;
 - (b) monitor compliance with the terms of the issuance agreement and the special resolutions of the debt security holders;
 - (c) redress investor's grievances and complaints:

Provided that designating compliance officer shall not absolve the investment agent from its obligations.

- (3) The compliance officer shall immediately report any non-compliance, observed by it, with any provision of the Act or these Regulations to the concerned officer who shall immediately take such steps that rectify the non-compliance.
- (4) Where the investment agent fails to take steps as required under sub-regulation (2) and (3), the compliance officer shall immediately inform the Commission and the securities exchange of such non-compliance.

15D. **Conflict of interest.**—(1) The Investment agent shall take all reasonable steps to ensure that no conflict of interest arises while undertaking any transaction and performing its duties. In this context, it shall:

- (i) before entering into an agreement with the issuer, disclose to the issuer all possible conflicts of interest including that of its sponsors and directors which could impair its ability to render fair, objective and unbiased service.
- (ii) immediately inform to the issuer and the debt security holders, in case any conflict of interest arises and not gain any direct or indirect advantage from the situation and shall act in the best interest of the debt security holders.

- (iii) put in place a mechanism to resolve any conflict of interest that may arise in the conduct of business and take all reasonable steps to resolve all conflict of interests in an equitable manner.
- (iv) ensure that channels of communications, like logs of e-mails and other inter-office information exchange channels are properly documented and monitored regularly and effectively.
- (v) Put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of its business and where any conflict of interest arises, it shall take reasonable steps to resolve the same in an equitable manner.

15E. Maintenance of records by Investment agent.—(1) An investment agent shall properly maintain the following records, namely:—

- (i) all contracts relating to the Issue to which it is acting as an investment agent including but not limited to issuance agreement, letter of hypothecation, letter of lien, memorandum of deposit of title deed and the charge registration certificate, where applicable etc.;
 - (ii) statements relating to profit payment and principal redemption;
 - (iii) minutes of the general meeting of the debt security holders and special resolution passed therein;
 - (iv) all documents relating to compliance with the covenants of the issuance agreement and enforcement of security, where applicable;
 - (v) Debt security holders' complaints and subsequent correspondence; and
 - (vi) such other records as may be specified by the Commission from time to time.
- (2) The investment agent shall ensure that the record referred to in sub-regulation (1) is maintained and preserved in good order for a period of at least ten years from the date of complete redemption of the Issue.

- (3) The investment agent shall,—
- (i) ensure that the record is kept at such a place and maintained in such a manner that the Commission or any person appointed by it has easy access to it; and
 - (ii) establish and follow record retention policy which shall ensure that all relevant legal and regulatory requirements are complied with.”;
- (10) for regulations 16, the following new regulations shall be added, namely:—
- “16A. **Monitoring and Supervision of the Trust Structure by Commission.**—The Commission shall,—
- (i) share the NOC in relation to creation of Trust with the relevant provisional authorities.
 - (ii) assess the compliance of the Debt Securities Trustee with the provisions of the Trust Deed, the Act and these Regulations on annual basis and submit the same to relevant provisional authorities.
 - (iii) share the audited annual account of the trustee with relevant provisional authorities on annual basis.
 - (iv) On request of relevant provisional authorities, obtain requisite information from the Debt Securities Trustee for onward submission.
- 16B, **Relaxation.**—The Commission may relax any of the requirements of these regulations for Government debt securities.”;
- (11) Form-A, Annexure-I, Annexure-III, Form-B, Form-C, Annexure-II, Form-D and Form-E shall be omitted;
- (12) in Schedule-I, “Contents of Trust Deed”;
- (i) In Para-1, in the section “The Issuer”, for the expression “Trust Act 1882”, the words Trust Act shall be substituted;
 - (ii) In para 2, in the section “Obligations of the Issuer in case of re-scheduling, re-structuring”, in clause (ii), for the words

“section 160(1)(b) of the Ordinance”, the words “Companies Act” shall be substituted;

- (iii) after paragraph “13. Miscellaneous:” following shall be inserted, namely,—

“14. Extinguishment of trust:

The trust shall be extinguished upon:

- i. completion of purpose of the trust *i.e.* debt issuance; or
 - ii. Enforcement of charge on the trust asset resulting in payment of outstanding amount of principal and profit payment to debt securities holders.”
- i. In Note at the end, in clause (i) and clause (ii), for the words “Ordinance”, the words “Companies Act” shall be substituted; and
- (13) after Schedule-I, the following new Schedule-II shall be inserted, namely:—

“SCHEDULE-II

CONTENTS OF ISSUANCE AGREEMENT

The issuance agreement should contain all the necessary terms and conditions including the following:

1. The Issuer

All obligations and responsibilities of the issuer under the Act, the Regulations, and any other applicable law or directions by the Commission including the following:

- (i) its obligation for maintaining proper record of its books of accounts and keeping it open for inspection by the investment agent;
- (ii) its obligations for maintaining proper register of debt securities holders with their addresses, record of subsequent transfers and changes of ownership;
- (iii) its obligations for facilitating the investment agent to enter its premises and inspection of the charged assets, if any;

- (iv) its obligations for intimating the investment agent of all orders, directions, notices of the courts of law affecting or likely to affect the charged assets or interest of the debt securities holders;
- (v) its obligations for submitting any document or information including copies of financial reports; auditor's certificate on maintaining minimum redemption reserve fund, if required; report on redemption of debt securities; report on conversion of debt securities, if they are convertible; report on dividend payment, contracts relating to the Issue and detail of the assets backing the debt security etc. as and when required by the Investment agent;
- (vi) its obligations for keeping the charged assets, if any, in proper condition;
- (vii) its obligation to create a charge in case of secured instrument through letter of hypothecation or letter of lien in favor of investment agent;
- (viii) its obligation to register the charge with the Commission;
- (ix) its obligation to pay the profit and the principal amount;
- (x) its obligation to seek prior consent of the investment agent for declaration of any dividend, if so required;
- (xi) its obligations for reporting to investment agent before any change in the nature and conduct of business of the issuer;
- (xii) its obligations for submitting periodical report on semi-annual basis to the investment agent containing at least the following:
 - (a) register of debt securities holders;
 - (b) number and nature of grievances received by the issuer from debt securities holders and status of resolution thereof;
 - (c) amount of markup due but unpaid and reasons for non-payment thereof and detail of due but unpaid /un-delivered payments, if any;
 - (d) a declaration confirming that its assets which are available by way of security are sufficient to discharge the claims of the debt securities holders as and when they become due.

- (xiii) its obligations for submission of its annual audited accounts to the investment agent within thirty (30) days from the date of the general meeting in which such accounts are approved;
- (xiv) its obligations to conduct and manage its business affairs with due diligence and efficiency in accordance with sound financial practices;
- (xv) its obligations to inform the investment agent about the material change in its shareholding structure and the Board of Directors;
- (xvi) its obligations to provide the investment agent information about its financial condition, business and operations as and when requested by the investment agent;
- (xvii) its obligation to inform the investment agent regarding any change in the utilization of proceeds of the Issue where the offering document sets out specific purpose for the utilization of the proceeds of the issue;
- (xviii) its obligations to furnish to the investment agent copies of all documents, reports, notices, circulars and particulars which the issuer provides to its creditors;
- (xix) its obligations to immediately inform the investment agent of the occurrence of any event of default;
- (xx) its obligations that until all the amounts payable by the issuer in relation to the debt security have been paid in full to the satisfaction of the investment agent, the issuer shall not without prior written consent of the investment agent:
 - (a) sell, transfer or otherwise dispose of, except in the ordinary course of business, any of the charged assets or more than 20 per cent of its undertaking or assets or permit any merger, consolidation, dismantling or reorganization;
 - (b) create or permit to subsist any pari passu or superior security interest over the charged assets or any portion thereof except in accordance with inter-creditor agreement, if any, to which the investment agent is a party;
 - (c) demolish or remove any part of the buildings which are part of the secured assets or the fixtures and fittings annexed thereto except in the ordinary course of repair, maintenance, replacement or improvement;

- (d) change its memorandum or articles of association, in a manner that may adversely affect its ability to perform its obligations in respect of the debt security Issue;
 - (e) take any action which is likely to result in a material adverse change in the Issue; and
 - (f) declare or pay any dividends after the occurrence of any event of default.
- (xxi) its obligation to ensure that the assets of the Issuer backing the debt security are maintained and sufficient to discharge its obligations as the issuer;
- (xxii) its obligation to ensure that all information provided to the Investment agent relating to the issue is accurate and that it has not concealed any material facts/information.

2. **Obligations of the Issuer in case of rescheduling, restructuring etc.**—Where the issuer intends to reschedule or restructure the debt security issued by it, it may do so subject to fulfilment of the following conditions namely:

- (i) The issuer shall call general meeting of debt securities holders for obtaining approval of the proposed re-scheduling or re-structuring;
- (ii) A statement annexed to the notice of the meeting shall set out all material facts as per the Companies Act including instrument's latest credit rating, if any;
- (iii) In case of listed debt securities, the issuer shall, prior to sending the notice to holders of debt securities, file a copy of the notice and proposed resolution with the Commission, the investment agent, the credit rating company and the securities exchange, for dissemination of the same to public on its website;
- (iv) The re-scheduling or re-structuring of an issue of a listed debt security shall be undertaken by way of approval of at least two third majority of the debt securities holders in value for the time being outstanding;
- (v) The issuer shall redeem the listed debt securities held by the individual small investors holding securities up to Rs.500,000;
- (vi) Supplementary issuance agreement shall be executed at the time of such re-scheduling or re-structuring;

(vii) Additional security shall be arranged, if required;

3. Purpose and salient features of the Issue:

Complete detail and information regarding the following:

- (a) Purpose of the Issue, utilization of the proceeds thereof and Issue size.
- (b) tenure of the Issue.
- (c) markup/coupon rate.
- (d) redemption schedule.
- (e) options like call option, put option and conversion option, if any, and in case of conversion option, the conversion procedure.
- (f) debt equity ratio (the company's long-term debt/equity ratio and the company's total debt/equity ratio both before and after the issuance of the debt security).
- (g) debt service coverage ratio, if applicable.

4. Details Of the assets backing the debt security if applicable:

- (a) Nature of the assets.
- (b) Book value of the assets as per the latest audited accounts of the issuer.
- (c) Nature of the existing charge(s) viz floating, exclusive, *pari passu*, ranking etc. on the charged assets and total amount of such charges.
- (d) Nature of charge(s) established in favor of the investment agent.
- (e) Circumstances under which security becomes enforceable and procedure for enforcing the charge.
- (f) Minimum amount of the security to be maintained at all times during the tenure of the debt security.
- (g) Procedure for successive valuation of the assets backing the debt security, if required.

- (h) Procedure for inspection of the charged assets and books of accounts by the investment agent or any person or persons authorized by it.
 - (i) Mechanism for preservation of the assets backing the debt security.
 - (j) Circumstances under which the security may be disposed off or leased out with the approval of the investment agent.
5. Procedure for Enforcement of Security and related risk factors.

The procedure for enforcement of security in case of default by the issuer and risk factors connected to the enforcement of security should be provided in detail.

6. Details of charge, if any that has been created by the issuer on issue specific assets for securing other loans.

7. Covenants

- i. Details of the agreements executed by the issuers with its creditors and covenants thereof.
- ii. Details of covenants both positive and negative, if any in relation to said debt security issuance.

8. Events of Default:

All the events, which if occurred shall require the Investment agent to initiate the actions, proceedings including enforceability of the security for safeguarding interest of the debt securities holders, should be defined.

9. Rights of Investment agent in case of issuer's default:

- (i) right of the investment agent to inspect any document of the issuer relating to the Issue including the books of accounts, contracts relating to assets backing the debt security, the register of debt securities holders and shareholders etc. and to take copies and extracts thereof.
- (ii) the right of investment agent to appoint nominee director(s) on the board of the issuer in the case of default.
- (iii) right of the investment agent to call meeting of the debt securities holders, the events under which such meeting may be called and minimum quorum for the meeting of debt securities holders.

- (iv) right of the investment agent to approach a court of competent jurisdiction in the event of any default by the issuer and its failure to comply with the covenants of the issuance agreement.

10. Rights of the debt securities holders:

- i. to call meetings;
- ii. to vote at the general meetings of the debt securities holders;
- iii. to initiate proceeding against the issuer in case of event of default or any other noncompliance by giving notice in writing to the investment agent:

Provided that to initiate proceeding: (i) approval of at least 51% of debt securities holders in value for the time being outstanding shall be required or (ii) as specified in the issuance agreement.

- iv. to replace the investment agent if it contravenes any provision of the Act, the Companies Act, these Regulations, its obligations under the issuance agreement.

11. Duties/power of Investment Agent:

All obligations and duties of the investment agent under the Act, the Companies Act, these Regulations, or the issuance agreement and any other applicable law including the following:

- (i) its obligation to regularly monitor payment of profit to the debt securities holders and redemption of the debt security and ensure that it is according to the redemption schedule provided to the debt securities holders.
- (ii) its obligation to monitor delay or default in payment of profit and redemption of principal amount to the debt securities holders.
- (iii) its obligations towards regularly monitoring compliance by the issuer with all the covenants of the Issuance agreement.
- (iv) its obligations of reporting to the debt securities holders about actual or potential breaches of its own or the issuer's obligations along with remedial steps taken or to be taken and the manner and time period during which the debt securities holders shall be informed of such breaches.

- (v) its obligation to monitor on semi-annual basis the quantum of security, through which the Issue is secured, and to ascertain whether the security of the issuer backing the debt security is sufficient to discharge the claims of debt securities holders as and when they become due.
 - (vi) its obligation in case of impairment of the security; and
 - (vii) its obligation to enforce security, where necessary, in the interest of the debt securities holders.
12. Removal and Resignation of the investment agent:
- i. Details relating to instances and procedure for the retirement, removal and resignation of the investment agent including appointment of new investment agent.
 - ii. Procedure for modifications/rectification in the issuance agreement.
 - iii. clause prohibiting any unilateral modification/ amendment by either party to the issuance agreement.
13. Miscellaneous:
- (a) Provisions for redressal of grievances of debt securities holders.
 - (b) Provision that the investment agent shall not relinquish from its assignment unless another is appointed.
 - (c) fee or commission of the investment agent.
 - (d) Provisions relating to the quorum, voting, whether meeting of the debt securities holders may be convened by the issuer, the Investment agent and/or by the debt securities holders, minimum holding for convening meeting by debt securities holders etc.
 - (e) Procedure for initiating action against the issuer in event of default or any other non-compliance.
 - (f) Procedure for enforceability of the security backing the instrument.
 - (g) Conditions under which the provisions of issuance agreement or the terms and conditions of the issue may be changed.
 - (h) Provisions relating to the creation and maintenance of redemption reserve fund, if any.

- (i) Indemnification of the investment agent.
 - (j) Preferential treatment, if any, to any class of investors in case of redemption of debt securities or in the event of default or rescheduling / restructuring of debt security.
14. Extinguishment of the issuance agreement.

Issuance agreement shall be extinguished upon:

- i. completion of purpose of the issuance agreement *i.e.* debt issuance;
or
- ii. Enforcement of charged asset resulting in payment of outstanding amount of principal and profit payment to debt securities holders.

Note:

- (i) The arrangement for rendering services as investment agent does not absolve the issuer of the obligations and responsibilities placed on it under the Act, the Companies Act, these Regulations and the issuance agreement.
- (ii) The issuance agreement may incorporate additional clauses, provided that the additional clauses do not dilute or contravene the provisions of the Act, the Companies Act, these Regulations or the Issuance agreement particularly of the above clauses.”.

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BILAL RASUL,
Secretary to the Commission.